

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Attorney Docket No. 132385 (14088US02)

In the Application of:

Thomas C. Kienzle III

Serial No. 10/677,420

Filed: October 2, 2003

For: Adjustable Instruments For Use With
An Electromagnetic Localizer

Examiner: Christian Anthony Sevilla

Group Art Unit: 3775

Confirmation No. 8453

Electronically Filed on April 30, 2010

ELECTION WITH TRAVERSE

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Examiner Sevilla:

This Paper responds to the Office Action mailed March 31, 2010. The Office Action indicates the following:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-23, drawn to a system, classified in class 606, subclass 130.

II. Claim 24, drawn to a method, classified in class 606, subclass 96.

Inventions I and II are related as product and process of use.

If invention I is elected, further restriction is required to one of the following inventions:

I-A. Claims 1-12, drawn to a system, classified in class 606, subclass 1.

I-B. Claims 13-23, drawn to a system, classified in class 606, subclass 130.

Inventions I-B and I-A are related as combination and subcombination.

See March 31, 2010 Office Action at page 2.

Accordingly, the Applicants elect, **with traverse**, the inventions of Groups I-A (Claims 1-12).

TRAVERSAL

The Applicant traverses this restriction requirement because “[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” See Manual of Patent Examining Procedure (MPEP) at § 803. The Applicant respectfully submits that the Office Action has not established a *prima facie* serious burden with respect to a **search and examination** of all the claims. Indeed, nowhere does the Office Action even state that such a burden exists. As such, the Applicants have demonstrated that the Office Action has not explained how and why the reasons set forth in the Office Action establish a *prima facie* **serious** burden with respect to the search and examination of the claims of the present application.

For at least the reasons discussed above, the Applicant respectfully requests reconsideration of the restriction requirement. Indeed, all of the pending claims of the present

application should be examined together due to the fact that the Office Action has not established a *prima facie* showing of a serious burden with respect to the search and examination of these claims.

The Applicant is aware that if this restriction requirement is made final, it will be necessary to file a Petition if this traversal is to be pursued.

If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited to contact the undersigned attorney. While no fee is believed due with respect to this Election, the Commissioner is nevertheless authorized to charge any necessary fees, or credit any overpayment to the Deposit Account 13-0017.

Respectfully submitted,

Date: April 30, 2010

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